

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**JOSE OCEGUEDA,**

Plaintiff,

v.

**CIVIL ACTION NO. 3:07-CV-128  
(BAILEY)**

**WARDEN JOYCE FRANCIS,  
VALERIE RAPPOLD, CAPT.  
MATTHEW ARNOLD, DEBORAH  
LIVINGSTON, SCOTT HEATH,  
TIMOTHY TOMPKINS, WILLIAM  
KING AND DANIEL BRIGHT,**

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on July 25, 2008 [Doc. 53]. In that filing, the magistrate judge recommended that this Court deny and dismiss the plaintiff's civil rights Complaint [Doc. 1].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or

recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984).

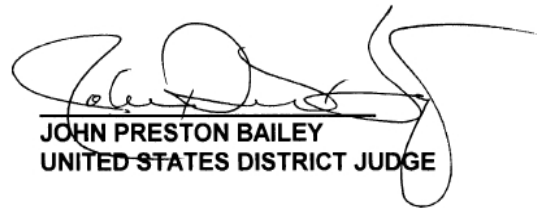
On August 8, 2008, the plaintiff filed a Motion for Extension of Time to File an Objection [Doc. 55], in which he requested a sixty (60) day extension of time to file objections to the magistrate judge's R & R. By Order dated August 14, 2008 [Doc. 57], this Court granted the plaintiff a thirty (30) day extension. Accordingly, any objections were due by September 14, 2008. No objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Opinion/Report and Recommendation [Doc. 53]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court hereby **GRANTS** the defendants' Motion to Dismiss **[Doc. 45]** and **DENIES and DISMISSES with prejudice** the plaintiff's civil rights Complaint **[Doc. 1]**. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* plaintiff.

**DATED:** September 23, 2008.



**JOHN PRESTON BAILEY**  
**UNITED STATES DISTRICT JUDGE**